

WRIT PETITION NO.917 OF 2006

Dagadu Budhaji Bagul	Petitioner
versus	
Mandakini Popatlal Gundecha & ors.	Respondents

Mr.R.V.Govilkar for petitioner.
Mr.P.J.Thorat for respondents 1 to 8.

CORAM : A.S.OKA, J.
DATE : 07th February 2007

PC :

1. Rule. Learned advocate for respondents waives service. Taken up for hearing forthwith considering the facts and circumstances of the case.

2. The petitioner is the original plaintiff and respondents are the defendants. The suit filed by the petitioner was dismissed for default on 12th September 2001. An application was made by the petitioner for restoration of the said suit. As there was a delay in filing the said application, the petitioner applied for condonation of delay. The application for condonation of delay has been rejected only on the ground that the suit number is not mentioned

in the application for condonation of delay. An appeal preferred against the said order is dismissed on the ground that it is not shown to be maintainable.

3. I have heard the submissions of learned counsel for the parties. As set out earlier, the suit was dismissed for default on 12th September 2001. According to the case of the petitioner, his advocate became aware about the dismissal of the suit on 23rd October 2001. He obtained a certified copy of the order of dismissal of the suit on 25th October 2001. On 26th, 27th and 28th October 2001, the Court was not functional due to holidays and the application was filed on 30th October 2001. In the affidavit in support of the said application, the petitioner had set out the suit number, though the same was not mentioned in the application. The learned Trial Judge has rejected the application on very hyper-technical ground by saying that the suit number is not set out in the application for condonation of delay and, therefore, it was not possible to determine as to which suit the application relates.

4. The entire approach of the learned Trial

Judge is perverse. As stated earlier, the affidavit in support discloses the suit number. The ground for setting aside the order of dismissal was that the date fixed for hearing of the suit was preponed. The suit was dismissed on 12th September 2001 and the application was moved on 30th October 2001. Thus, the delay was hardly of 18 days.

5. Perusal of the affidavit in support of the application filed by the petitioner in the Trial Court records that on 30th August 2001 the suit was adjourned till 28th September 2001. However, the suit was taken on board on 12th September 2001 and was dismissed for default. In my view, a case is made out for condonation of delay and for restoration of the suit. The petitioner will have to compensate the respondents by paying the costs. Hence following order.

6. ORDER :-

A) The order of dismissal dated 12th September 2001 passed in the RCS No.64 of 1999 is quashed and set aside and the suit is restored to file;

B) The petitioner will pay costs of Rs.3,000/- (Rs.Three thousand only) to the respondents within a period of six weeks from today;

C) The Trial Court will decide the suit expeditiously.

MST

((-4-))

(A.S.0KA, J.)